

**Remarks**

Claims 2-5, 7, 8 and 15 are pending herein. Claim 15 is the independent claim. Claim 4 has been withdrawn from consideration. By this Amendment, claims 5 and 15 have been amended.

Claim 15 has been amended to limit the number of shells in the core-shell copolymer (A) to one. Support for this amendment can be found, e.g., in claim 5 which indicates that the number of shells can be one or more than one. Claim 5 has been amended to be consistent with the amendment to claim 15.

According to the Office Action, the indicated allowability of claim 15 is withdrawn in view of newly discovered references, and the finality of the earlier Office Action is withdrawn in order to apply the rejections summarized below.

In the Office Action, claims 2, 3, 5, 7, 8 and 15 are rejected under 35 U.S.C. §102(b) and §102(e) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 5,854,346 to Meyer (“Meyer”); claims 2, 3, 5, 7, 8 and 15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Meyer optionally in view of U.S. Patent No. 4,912,163 to Lausberg (“Lausberg”); and claims 2, 3, 5, 7, 8 and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,809,151 to Lacroix et al. (“Lacroix”).

In view of the remarks herein, Applicants respectfully request reconsideration and withdrawal of the rejections set forth in the Office Action.

**I. Rejection Under 35 U.S.C. §102(b)/ §102(e) or §103(a)**

In this rejection, Meyer is cited for exemplifying in Table 1 a blend of 82% of PBT, 15% of core/shell polymer and 3% ethylene/ethylacrylate/glycidylmethacrylate copolymer. The core/shell has a butadiene copolymer core and a polystyrene shell and a PMMA shell.

Applicants respectfully submit that claims 2, 3, 5, 7, 8 and 15 are not anticipated by and would not have been obvious over Meyer.

Claims 2, 3, 5, 7 and 8 depend upon claim 15. Claim 15 has been amended herein to recite that the core-shell copolymer (A) has a single shell. The core/shell copolymer in Meyer’s blend represented in Table 1 therein has two shells. Therefore, for at least this reason,

Applicants respectfully submit that Meyer does not anticipate and would not have rendered obvious instant claims 2, 3, 5, 7, 8 and 15.

## **II. Rejection Under 35 U.S.C. §103(a)**

Claims 2, 3, 5, 7, 8 and 15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Meyer optionally in view of Lausberg. In this rejection, Meyer is cited for teaching that the core therein can have up to 30% of a vinyl monomer copolymerized with butadiene (col. 2, line 4). However, Meyer does not name alkyl(meth)acrylates as the vinyl monomer. According to the Office Action, one of ordinary skill in the art would recognize acrylates as such vinyl comonomers. The Examiner cites Lausberg for describing suitable vinyl comonomers for butadiene in similar compositions (see col. 3, line 53). According to the Examiner, it would have been obvious to use an acrylate as the vinyl comonomer in Meyer.

As stated above, Meyer's blend shown in Table 1 therein uses a core/shell copolymer containing two shells. The core-shell copolymer (A) recited in amended claim 15 herein has a single shell. Thus, whether or not it would have been obvious in view of Lausberg to use an acrylate as the vinyl comonomer in Meyer, Meyer does not render obvious instant claims 2, 3, 5, 7, 8 and 15.

## **III. Double Patenting Rejection**

Claims 2, 3, 5, 7, 8 and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of Lacroix. Although the conflicting claims are not identical, the Office Action states that the claims are not patentably distinct from each other because Lacroix also claims blends of polyester, core/shell polymer and ethylene/epoxy copolymer. The Office Action states that Lacroix's claims are broader in the sense that no particular (B)/(A) ratio is required when the total amount of impact modifier is above 18%. The Examiner states that although a provisional double patenting rejection over U.S. Application No. 09/718,426 ("the '426 application) (now Lacroix) had been overcome earlier in the instant application's prosecution, the claims of the '426 application did not remain consistent with the arguments presented by Applicants.

Applicants would like to delay the filing of a Terminal Disclaimer in this case until the claims of the present application are in final form, at which time it will be clear whether a terminal disclaimer is still necessary.

**IV. Conclusion**

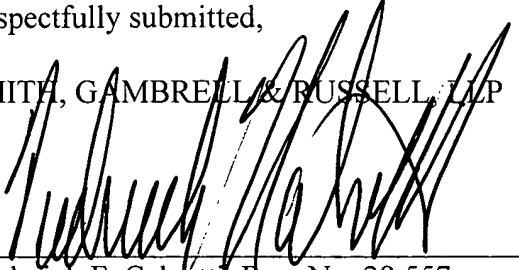
In view of the amendments and remarks, Applicants respectfully request that the rejections be withdrawn and that claims 2, 3, 5, 7, 8 and 15 be allowed.

If any fees are due in connection with the filing of this Amendment, such as fees under 37 C.F.R. §§ 1.16 or 1.17, please charge the fees to our Deposit Account No. 02-4300; Order No. 033808.137.

Respectfully submitted,

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